

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
U. S. ROYALTY OIL CORPORATION AND }  
CONSOLIDATED ROYALTIES, INC. }

Appearances:

For Appellants: Roland T. Williams, Attorney

For Respondent: 'Chas. J. McColgan, Franchise Tax Commis-  
sioner

O P I N I O N

These are appeals pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Ch. 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of U. S. Royalty Oil Corporation and Consolidated Royalties, Inc., to proposed assessments of additional tax for the year 1933. Inasmuch as both Appellants were represented by the same counsel; and but one brief was filed on behalf of both corporations, we have considered these appeals as a consolidated appeal.

The principal question involved in these appeals is whether amendments to Section 13 of the act, which became effective in 1933, and which changed the method of computing taxes for the second taxable year of commencing corporations, should be applied in the computation of taxes for the year 1933.

The Appellant corporations are both subsidiaries of the United States Oil and Royalties Company, a Utah corporation, doing business in California. Both of the subsidiaries are California corporations. Both were organized in 1932, and commenced doing business in this State for the first time during that year.

The parent corporation and each of the subsidiaries sustained losses during the year 1932 and each filed a separate return for that year. For the year 1933, the three corporations joined in filing a consolidated return. This return showed a loss for the consolidated group for the year 1933, but reflected net income for both subsidiaries.

At the beginning of the year 1933, Section 13 of the Act provided that the tax for the second taxable year of commencing corporations should be computed upon the basis of the return for the first taxable year. If these provisions are controlling in the instant case, no tax in excess of the minimum is due from the subsidiaries for their second taxable year, i.e., the year

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1933, since they failed to realize net income for their first taxable year, i.e., the year 1932.

In May 1933, amendments to Section 13 became **effective** providing that the tax for the second taxable year of commencing corporations should be adjusted upon the basis of the net income for the second taxable year (Statutes of 1933, Chapters 210 and 303, effective May 1, 1933 and May 12, 1933, respectively). The Commissioner considered that the amended provisions were controlling, and, since the subsidiaries realized net income during their second taxable year, proposed additional **assessments** against each subsidiary for the year 1933. The additional assessments amounted to \$171.83 in the case of U. S. Royalty Oil Corporation and **\$258.42** in the case of Consolidated Royalties Inc.

Appellants contend that the amended provisions of Section 13 should not be considered applicable to the computation of taxes for the year 1933, for to do so would be to give them an **unlawful** retroactive effect. It is to be observed, however, that the Acts effecting the amendments each provided that they should be applied in the computation of taxes accruing subsequent to December 31, 1932. Furthermore, we have consistently held that, in the absence of an expressed intention to the contrary, **amendments to the Act are applicable in the computation of taxes for the year in which the amendments become effective.** See Appeal of United States Oil and Royalties Company (decided by this Board on May 10, 1932) and Appeal of Bankamerica Company (decided by this Board on October 12, 1932). This view was upheld by the California Supreme Court in the case of Fullerton Oil Company vs. Johnson, 89 Cal. Dec. 35. Accordingly, we must hold that the Commissioner acted properly in following the provisions of Section 13 as amended in May 1933 in computing Appellants' **tax** liability for the year 1933.

The only other question involved in these appeals relates to the method employed by Consolidated Royalties, Inc. in computing depletion allowance on its oil property. This Appellant contends that, under the Act, it has the option of computing depletion allowance either on the basis of **27½%** of the gross income from the property or on the basis of the cost of the property. For the period in question, Appellant elected to use the latter method and deducted **10%** of the cost of the property. The Commissioner disallowed this deduction.

Although Appellant **is** correct in its view of the law, it has submitted absolutely no evidence to show that the deduction claimed is a reasonable allowance on account of depletion. Consequently, we are not in a position to hold that the Commissioner erred in disallowing the deduction.

**O R D E R**

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of Charles J. **McColgan**, Franchise Tax Commissioner, in overruling the protests of U. S. Royalty Oil Corporation, and Consolidated Royalties, Inc., corporations, against proposed assessments of additional tax in the amount of ~~\$171.83~~ and \$258.42, respectively, based upon the returns of said **corporation** for the year 1933, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento. California, this 25th day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman  
John C. Corbett, Member  
Fred E. Stewart, Member  
Orfa Jean **Shontz**, Member  
Ray L. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary